



To: Texas Judges Hearing Child Protective Services Cases

From: Hon. John Specia (ret.), Jurist in Residence
Office of Court Administration

Date: November 8, 2012

RE: **Legislative Proposal on Appointment and Compensation
of Counsel in Child Protective Services (CPS) Cases**

Greetings fellow judges! As the 83rd Legislative Session approaches, in partnership with the Supreme Court Children's Commission, I anticipate sharing important information with you about proposed legislation that may affect how judges handle CPS cases. Your input is very important and I encourage you to respond to my legislative communiqués so that I, along with Tina Amberboy, the Executive Director of the Children's Commission, can inform the legislature about the effects amendments and additions to the Family Code may have on your ability to oversee CPS cases.

In this letter, I want to share information about the proposed Appointment of Counsel bill (linked at the end of this letter) that changes how judges and counties handle private attorney appointments in CPS cases and provides statutory authority for the creation of public defender and managed assigned counsel offices. I also ask that you send me your opinion on the proposed legislation by clicking on a feedback link at the end of this letter.

In 2009, the Children's Commission undertook a study to assess the timing, methods, and duration of attorney appointments in CPS cases. The study also collected information on training requirements, the availability of legal training, compensation, and judicial evaluation of attorney performance in the various jurisdictions. The study found that while children's attorneys are appointed shortly after the case is filed, and before the first hearing as required by statute, parents' attorneys are usually not appointed until sometime later in the case, despite the fact most parents involved in a CPS case satisfy the statutory requirement for a court-appointed attorney. Delaying the appointment of counsel until later in the case often places parents at a strategic disadvantage by not having a lawyer who can advocate for the parents, weigh the evidence, obtain appropriate service plans, and look for relative placements. Once the child is in the State's care, it is likely to take 12 to 18 months before the legal case is over and the child exits the system.

The study also found issues with the quality of legal representation, especially that of parents' attorneys. Many participants commented that some of the attorneys were not properly trained, did not understand the law, and were not qualified for appointment, yet they continue to receive appointments despite their unsatisfactory performance. Finally, the study revealed that most court-appointed lawyers are not properly compensated for the extremely important work they do. Most courts pay very little for lawyers to attend hearings, and often pay nothing for out of court preparation or for travel time and expenses. This provides little financial incentive for

case investigation or preparation or meeting with clients and potential witnesses – all duties that are statutorily required. The problem is compounded when lawyers rely solely on others for information, such as a CASA volunteer, or their opposing party, Child Protective Services.

For the past 18 months, over 30 members of the Children's Commission Legal Representation Workgroup have discussed how to implement study recommendations involving 1) the timing and duration of attorney appointments, 2) compensation and expenses related to representation, 3) training (initial and ongoing) required to qualify for and continue to receive appointments, 4) standards of representation for attorneys and performance evaluation. Generally, there is agreement that earlier appointments are a best practice and the clearer, more frequent notice to parents regarding their right to counsel should be a duty of the court. Also, not that low cost and free training for attorneys is readily available through the State Bar, Texas should statutorily require more of both initial training and continuing education. Most workgroup members also agree that standards of representation will elevate the quality of representation.

Although there is no consensus on how compensation can be restructured to relieve some of the financial burden on Texas counties, many workgroup members agree that an Appointment of Counsel Plan (ACP) that includes a description of the appointment process that allows for judicial discretion, flexibility, and good cause exceptions to plan elements, is desirable and would provide transparency as well as a sense of stability for attorneys and parties. Also desirable is notice to parties of their rights, what they may reasonably expect from appointed counsel, and how to bring inadequate preparation or other complaints about appointed counsel to the court's attention. Attorneys would benefit because the ACP would include information about standards of representation and ethical considerations they are expected to meet, local training and education requirements, and suggestions on where and how to get it. The plan would also include information on local compensation and reimbursable expenses. The ACPs would be written, publicly available in the District or County Clerk's office, apply to trial and appellate cases, and subjected to annual review by the family and juvenile judges who develop and use the ACP.

Attached is a draft of an Appointment of Counsel bill that would attempt to address many of the issues brought to light by the Legal Representation Study (LRS) and discussed by the Commission's LRS workgroup for the past 18 months. The ACP plan proposed by this legislation is intended to provide judges with a liberal amount of judicial discretion and flexibility, while also providing attorneys, their clients, and other stakeholders information and transparency about how the local appointment system works.

[CLICK HERE TO VIEW THE PROPOSED APPOINTMENT OF COUNSEL BILL.](#)

[CLICK HERE TO SEND US YOUR FEEDBACK](#) BY COMPLETING A SHORT, 3-QUESTION SURVEY.

Please submit your comments by November 30, 2012.

Thank you for your time.

John Specia
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Office of Court Administration

